



POLICE DEPARTMENT

August 27, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Garry Lamour
Tax Registry No. 950716
Transit Bureau District 2
Disciplinary Case No. 2014-12377

The above-named member of the Department appeared before me on May 7, 2015, charged with the following:

1. Said Police Officer Garry Lamour, on or about November 8, 2013, at approximately 1730 hours, while assigned to Transit Bureau District 02 and on duty, inside the Chambers Street "J/Z" subway station, New York County, did wrongfully use force against Person A in that he grabbed Person A with both hands, physically forced him to the ground, and placed him in handcuffs without legal justification.

P.G. 203-11 – USE OF FORCE

2. Said Police Officer Garry Lamour, on or about November 8, 2013, at approximately 1730 hours, while assigned to Transit Bureau District 2 and on duty inside the Chambers Street "J/Z" subway station, New York County, abused his authority in that he arrested Person A without having the requisite legal authority to do so.

P.G. 208-01, Page 1, Paragraph 3 – ARRESTS – LAW OF ARREST

3. Said Police Officer Garry Lamour, on or about November 8, 2013, at approximately 1730 hours, while assigned to Transit Bureau District 2 and on duty inside the Chambers Street "J/Z" subway station, New York County, was discourteous to Person A and Person B.

P.G. 203-09, Page 1, Paragraph 2 – PUBLIC CONTACT – GENERAL

The Civilian Complaint Review Board (CCRB) was represented by Suzanne O'Hare, Esq. Respondent was represented by Craig Hayes, Esq. Respondent, through his counsel,

entered pleas of not guilty to the subject charges and specifications. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty of Specification No. 2. Respondent is found Not Guilty of Specification Nos. 1 and 3.

SUMMARY OF EVIDENCE PRESENTED

It is not disputed that on November 8, 2013, Respondent was on duty, in uniform, assigned to Transit Bureau District 2, performing patrol duties inside the "J/Z" subway station, on Chambers Street, Manhattan. At about 1730 hours, Respondent observed Person A and Person B, who were both high school students at [REDACTED], attempting to enter the subway system by swiping Metrocards. The turnstiles emitted a yellow light indicator signifying that the Metrocards they employed were reduced-fare student Metrocards. Respondent approached Person A and Person B and asked them to show him their student identification and their Metrocards. Person A presented his student Metrocard and his student identification card. Respondent examined the cards and returned them to him. Respondent then engaged in a verbal exchange with Person B the details of which are in dispute. After this exchange, Respondent arrested Person B for Theft of Services and Respondent later arrested Person A for Obstructing Governmental Administration, Disorderly Conduct and Resisting Arrest.

CCRB called Person A and Person B to testify and CCRB offered into evidence video recordings made by New York City Transit Authority (NYCTA) cameras located within

the "J/Z" subway station on Chambers Street which depict interactions between Respondent and Person A and Person B (*CCRB Exhibits 1, 1A*). Respondent testified on his own behalf.

Person B testified that when Respondent requested to inspect his Metrocard and student identification, he repeatedly asked Respondent why he needed to see his Metrocard. Respondent never provided a response. He just continued to demand to see the Metrocard and his identification. Person B testified that he eventually handed his Metrocard to Respondent but that as he reached into his pants pocket for his wallet, which contained his school identification, Respondent told him, "Get your hands out of your fucking pockets." Although Person B removed the wallet from his pants pocket, he kept it in his hand, he did not remove his school identification from the wallet, and he continued to ask Respondent why he needed to see his identification. He never received an explanation.

Person A testified that when he asked Respondent why he was arresting Person B, Respondent stated, "This doesn't concern you; go home." Person A testified that he took his cell phone and began video recording the interaction between Respondent and Person B. Respondent eventually saw Person A making the video recording and told him, "go home and put the phone away." Person A did not respond but Person B stated that it was lawful to record police activity. Respondent again told Person A to go home and put the phone away. Person A continued to record Respondent and Person B and remained 10-15 feet away, changing his position when Respondent moved with Person B to continue recording. During the time that he was recording Respondent and Person B, Person A was holding a cup of iced tea in one hand and his cell phone in the other. There came a point where Person A moved toward his right in response to Respondent's move toward Person A's left. Respondent looked at Person A, stated that he had told him to go home, and then charged Person A,

bringing him to the ground where he ended up on his face. The iced tea and Person A's cell phone fell from his hands to the ground. The cell phone's battery cover came off and the phone landed in a pool of the spilled iced tea. Person A placed his hands behind his back and was handcuffed by Respondent. Person A testified that his phone was eventually returned to him but that the video recording he created had been deleted. Person A confirmed that he has filed a civil action seeking damages regarding this incident.

Respondent testified that after he returned Person A's Metrocard and student identification card to him, he asked Person B if he had a student identification to go along with the student Metrocard he swiped. Person B replied, "Fuck you, I am not giving you any ID." Respondent testified that he told Person B that he was observed using a student Metrocard and his physical appearance suggested he might be too old to be a student authorized to use such a card. Respondent asked again for Person B to show him his student identification and Metrocard so that he could continue his travel. Person B replied that he knew his rights, he was not going to speak with Respondent and he was not giving Respondent anything. Respondent testified that Person A, who was observing the exchange, advised Person B to "give him the stupid ID so we can get out of here." Respondent testified that he saw Person B's wallet being held in one of his hands. Respondent testified that he told Person B that if he could not prove that the card belonged to him or that he was allowed to use it, he would be placed under arrest for Theft of Service. Person B refused again to provide any identification, stating "I'm not giving you anything."

Respondent then grabbed one of Person B's hands and informed him that if he did not turn over his identification, that he would be arrested for Theft of Services. Person B attempted to pull his hand from Respondent's grasp. Person A then began shouting "why are

you arresting my friend?" At this point, Respondent moved Person B to stand near a wall where he believed he would be safer, considering the presence of other passengers in the station, Person A's entreaties and the fact that he was operating alone. Respondent told Person B that he still had an opportunity to show his identification and "scratch this." Person B refused and Respondent attempted to place handcuffs on him. According to Respondent, Person B began to struggle in an attempt to avoid being handcuffed but he was eventually able to secure handcuffs around both of Person B's wrists. Respondent testified that he observed Person A moving back and forth behind him, so he placed a radio request for assistance.

Respondent testified that after he handcuffed Person B he informed him that he was under arrest for not paying the fare since he did not produce proper student identification. Respondent noticed Person A behind him and informed him that "this is a police affair and you are clear. You need to go home." Person A replied that he was "not going anywhere." According to Respondent, while he was still attempting to obtain pedigree information from Person B, Person A prevented him from doing so by moving back and forth behind him causing him to fear for his safety. Person A stated, "This is stop and frisk, you're stopping black people and it's not right. You are arresting my friend for no reason." Respondent replied, "You need to go home; you have no business here." Person B stated that Person A had the right to record what was going on. Out of concern for his safety, Respondent moved Person B from the mezzanine area to the area by the staircase exit, believing that there would be more people around there and that he would feel safer there.

As he was moving Person B, Respondent told Person A, "You need to give me time to establish contact with Person B. Go home and stop following me." As Respondent walked

with Person B toward the staircase, he had one hand on the handcuff chain, with Person B in front of him, and one hand holding Person B's backpack. Person A continued following and recording Respondent, shouting, "Where are you going with my friend?" Respondent felt that Person A was following him too closely for him to feel safe as he continued his police action regarding Person B. He decided to place Person A under arrest for Obstructing Governmental Administration. Respondent placed Person B against a wall and then reached out to grab Person A. Respondent, using a maneuver he had been taught at the Police Academy, grabbed Person A by one of his shoulders and one of his arms and brought him off his feet onto the floor. Respondent handcuffed Person A and lifted him back up to his feet.

Respondent's testimony on cross-examination and the video recordings made by the subway cameras inside the "J/Z" subway station on Chambers Street will be discussed in the Findings and Analysis section.

FINDINGS AND ANALYSIS

Specification No. 2

It is charged that Respondent abused his authority by arresting Person A without having the requisite legal authority to do so. Respondent arrested Person A on three charges: Obstructing Governmental Administration in the Second Degree (*Penal Law § 195.05*); Disorderly Conduct (*Penal Law § 240.20*); and Resisting Arrest (*Penal Law § 205.30*).

I find Respondent Guilty based on his own testimony and based on the video recording of the interaction between Respondent and Person A just before Respondent is seen grabbing Person A.

A person commits the crime of Obstructing Governmental Administration (OGA) when he “intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference, or by means of any independently unlawful act.” (*Penal Law § 195.05*). New York Courts have held that the means of obstruction or impairment used by a perpetrator must include physical interference¹ and that the perpetrator’s intent must have been to prevent the police officer from engaging in a specific official function.² Although it is not disputed that Respondent told Person A numerous times to go home and that Person A consistently refused to do so, a general refusal to cooperate with a police officer does not constitute OGA.³

Person A’s action of following Respondent and conducting non-stop recording of Respondent’s actions regarding Person B did not by themselves constitute OGA since video recording the actions of a police officer in a public area is not unlawful in New York and has been found to constitute activity which is protected by the First Amendment.⁴

Respondent testified that he decided to arrest Person A for OGA because he had interfered with Respondent’s “investigation to establish identity for Person B.” Respondent asserted that Person A’s physical proximity made him uncomfortable and constituted physical interference with his investigation. However, on cross-examination Respondent conceded that every time he asked Person A to move back, he complied; that Person A did not attempt to prevent him from arresting Person B; that Person A did not

¹ *People v. Case*, 42 NY2d 98 (1977).

² See cases cited in *Matter of Armell N.*, 28 Misc3d 528 (2010).

³ *Ibid.*

⁴ See *American Civil Liberties Union of Illinois v Alvarez*, 679 F3d 583, 608 [7th Cir. 2012]; *Glik v Cunniffe*, 655 F3d 78, 82, 85 [1st Cir. 2011]; *Smith v City of Cumming*, 212 F3d 1332, 1333 [11th Cir. 2000]; *Fordyce v City of Seattle*, 55 F3d 436, 439 [9th Cir. 1995]).

prevent him from escorting Person B from one area inside the subway to another; and that Person A did not prevent him from handcuffing Person B.

The video recording of the interaction between Respondent and Person A just before Respondent grabs Person A shows that Person A is recording on his cell phone; that Respondent appears to warn Person A to step back; and that Person A steps back and moves so far away that he disappears from camera view; and that Respondent has to take several steps to reach Person A and pull him back into camera view. Based upon the foregoing, I find that Respondent had an insufficient factual basis to arrest Person A for Obstructing Governmental Administration.

As to the Disorderly Conduct charge, the wording of Penal Law Section 240.20 does not support Respondent's position that he had sufficient legal authority to charge Person A with this offense. To be found guilty of violating Penal Law Section 240.20, a person must either intend to cause public inconvenience, annoyance or alarm, or recklessly create a risk thereof, by congregating with other persons in a public place and refusing to comply with a lawful order of the police to disperse. Respondent did not assert during his testimony that Person A had caused any public inconvenience, annoyance or alarm, or that Person A had congregated with any other persons. The videos establish that Person A was not congregating with anyone, that numerous transit passengers are seen walking by Respondent and Person A and Person B, and there is no visual evidence of transit riders congregating. In the absence of evidence that Person A intentionally caused public inconvenience, annoyance or alarm, or recklessly created a risk thereof, Respondent did not have a sufficient legal basis to charge Person A with the offense of Disorderly Conduct.

Finally, as to the Resisting Arrest charge, the video recording of Respondent arresting Person A does not corroborate Respondent's claim that Person A physically resisted Respondent.

Therefore, Respondent is found Guilty of Specification No. 2.

Specification No. 1.

It is charged that Respondent "wrongfully used force" against Person A in that in effecting his arrest of him he "grabbed Person A with both hands, physically forced him to the ground, and placed him in handcuffs" without legal justification.

It is clear from the wording of this charge that this Specification specifically addresses only the manner in which Respondent physically effected his arrest of Person A. Respondent's action of reaching out and grabbing Person A with both hands, placing him face down on the floor, and placing him in handcuffs is clearly visible on a video recording (File 1429). Respondent asserted that his action of grabbing Person A by one of his shoulders and one of his arms, bringing him off his feet and onto his stomach on the floor, was a maneuver that he had been taught at the Police Academy to safely gain control of a person he intended to handcuff. CCRB offered no evidence to refute Respondent's claim that he had been trained to use this physical maneuver and Person A suffered no injury as a result of Respondent's use of this maneuver. Since CCRB offered no evidence that Respondent's use of this particular physical maneuver constituted an improper use of force, I find that CCRB failed to meet its burden of proving that the force used by Respondent to effect Person A's arrest was wrongful.

Therefore, Respondent is found Not Guilty of Specification No. 1.

Specification No. 3

It is charged that Respondent was discourteous to both Person A and Person B.

Initially, I would note that although both Person A and Person B testified that Respondent directed profanity at Person B, neither claimed that Respondent had directed any profanity at Person A who had cooperated with Respondent's request to provide student identification. Thus, that part of the charge that alleges that Respondent "was discourteous *to* (emphasis added) Person A" was not proved.

With regard to that part of the charge that alleges that Respondent was discourteous to Person B, Person A and Person B offered different versions of what Respondent supposedly said. Person B testified that as he reached into his pants pocket for his wallet, he was told by Respondent to "get your hands out of your fucking pockets." Person A testified that Respondent told Person B, "Let me see your fucking Metrocard and ID." Respondent denied that he had used profanity in addressing Person B. Respondent testified that Person B had used profanity in addressing him in that when he asked Person B if he had a student identification to go along with the student Metrocard he had swiped, Person B replied, "Fuck you, I am not giving you any ID."

Person B's claim must be examined in light of the fact that when he was asked whether Person A had told him to give Respondent what he was asking for so that they could get out of there, he answered "no." However, Person A testified that he twice told Person B to let Respondent see his Metrocard and ID so that they could get out of there, which corroborates Respondent's testimony that Person A told Person B to give Respondent "the stupid ID so we can get out of here."

Even if I credit Person A's claim that Respondent told Person B, "Let me see your fucking Metrocard and ID," I would recommend that Respondent be found not guilty because the record establishes that he uttered this single profane word during the course of what became a lawful enforcement action solely as the result of the fact that an obstinate Person B had repeatedly refused to comply with Respondent's lawful orders to produce a student ID. Person A testified that Person B "continued to ask the officer why he needed to see the Metrocard and ID."

Since Person B used a student Metrocard to enter the subway system, Respondent had the right to inspect his Metrocard and to insist that Person B present him with valid student identification.⁵ Since Person B refused to provide student identification, Respondent had probable cause to arrest Person B for the crime of Theft of Services.⁶

Thus, solely as a result of Person B's willful and persistent refusals to comply with Respondent's lawful orders that he provide student identification, Respondent's interaction with Person B escalated into an enforcement action.

Respondent is found Not Guilty of Specification No. 3.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. *See Matter of Pell v. Board of Education*, 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 6, 2011. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

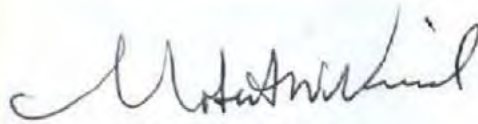
⁵ See New York City Transit Rules and Regulations Section 1050.6(d) and *People v Presha*, 107 AD2d 589 at 590 (1st Dept.) *app. denied*, 64 NY2d 892 (1985).

⁶ *Penal Law* § 165.15(3) a class "A" misdemeanor.

Respondent has been found Guilty of abusing his authority by arresting Person A without having the requisite legal authority to do so.

The APU prosecutor recommended that Respondent forfeit 15 vacation days as a penalty. Since I have found Respondent not guilty of two of three charges, imposition of a lesser penalty is warranted. It is recommended that Respondent forfeit five vacation days as a penalty.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner – Trials

APPROVED

NOV 20 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER GARRY LAMOUR
TAX REGISTRY NO. 950716
DISCIPLINARY CASE NO. 2014-12377

Respondent received an overall rating of 3.5 on his 2014 annual performance evaluation, and 4.5 on his 2013 annual evaluation. He has no medals. [REDACTED]
[REDACTED] He has no formal disciplinary record.

On March 14, 2014, he was placed in Level 1 Force Monitoring due to the receipt of three civilian complaints in one year. This monitoring is continuing.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner – Trials